HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1310 of 2006

Between

G.Sridhar Goud ..Appellant

AND

The Commissioner of Prohibition and Excise and others ..Respondents

:: JUDGMENT ::

Counsel for the appellant	Sri O.Manohar Reddy
Counsel for respondents 1to 3	Government Pleader for Excise
Counsel for respondent No.4	Sri Koka Raghava Rao assisted by Sri G.Anup Kumar

15.12.2006

Per G.S.Singhvi, CJ

This appeal is directed against order dated 30.10.2006 passed by the learned Single Judge, whereby she disposed of the writ petition filed by the appellant for quashing notice dated 6-7-2006 issued by Prohibition and Excise Superintendent, Dhoolpet, Hyderabad (respondent No.2) for production of 'No Objection Certificate' from the owner of the premises as a condition precedent to the grant of A-4 licence under the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') by directing him to produce the requisite 'No Objection Certificate' before respondent No.2 with a further direction to the said respondent to make an enquiry into the rival claims made by the appellant and respondent No.4 and then pass appropriate order.

The appellant is engaged in selling of liquor. For the last five years, he has been doing this business in the premises bearing No.16-11-492/1A situated in Dilsukhnagar, Hyderabad. In pursuance of the notification issued by District Collector, Hyderabad inviting bids for the lease of right of selling by shop for the period from 1.7.2006 to 30.6.2006, the appellant gave highest bid of Rs.29,00,000/- for the shop situated in Ward No.55, Moosarambagh, Hyderabad. His bid was accepted by the competent authority. After completing the formalities, he submitted an application for grant of licence. In the meanwhile, respondent No.4, who had leased out the premises to the appellant in May, 2001 filed Writ Petition No.11292 of 2006 with the prayer that the licence of the appellant may not be renewed. She alleged that the appellant had violated the conditions of licence by selling liquor in loose and allowing consumption of liquor in the premises. That petition was disposed of by the Court on 12.6.2006 by directing the Commissioner of Prohibition and Excise (respondent No.1) to consider the representation made by the petitioner (respondent No.4 herein) and to take necessary action in accordance with law within a period of two weeks. The relevant portion of that

order reads as under:

> "Having heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise, appearing for the 1st respondent and having regard to the nature of the controversy involved, without expressing any opinion as to the correctness of the allegations made by the petitioner, the writ petition is disposed of with a direction to the 1st respondent to consider the representations made by the petitioner dated 28.2.2005, 17.6.2005 and to take necessary action in accordance with law. Such exercise shall be completed as expeditiously as possible, preferably within a period of two weeks from the date of receipt of a copy of this order. Needless to mention that the 2nd respondent should be given an opportunity to rebut the allegations made by the petitioner. The 1st respondent shall also communicate the orders passed thereon to the petitioner."

In purported compliance of the aforementioned order of the Court, respondent No.2 issued notice dated 6.7.2006 to the appellant requiring him to produce 'No Objection Certificate' from the owner of the premises as a condition precedent for grant of licence. The appellant challenged the notice in Writ Petition No.14161 of 2006 by contending that the same is ultra vires the provisions of Rule 27 of the Rules. Respondent No.4 contested the writ petition by asserting that the tenure of lease of the premises had come to an end by 31.3.2006 by efflux of time and, as such, the writ petitioner (appellant herein) is not entitled for grant of licence for running the liquor shop. The learned Single Judge took cognisance of the rival pleadings, order passed in Writ Petition No.13739 of 2005 wherein Rule 27(1) of the Rules was interpreted and disposed of the writ petition in the following terms.

> "Accordingly, the writ petition is disposed of granting liberty to the petitioner to produce NOC from the owner of the premises or any other material to show that he is entitled to continue in possession of the premises in question within two weeks from the date of receipt of this order. Thereafter, the 2nd respondent shall make an enquiry as to the rival claims made by the petitioner and the fourth respondent and after satisfying

himself as to the entitlement of the petitioner to continue in possession of the premises in question, pass appropriate orders in accordance with law within a period of four weeks. On the basis of such order, the licence granted in favour of the petitioner pursuant to the interim order of this Court shall be reviewed."

Sri O.Manohar Reddy, learned counsel for the appellant emphasized that while determining the suitability of the premises in terms of Rule 27 (1), respondent No.2 could not have called upon the appellant to produce 'No Objection Certificate' from respondent No.4. He submitted that even though the lease of the premises had been terminated by respondent No.4 vide notice dated 1.4.2006, the appellant's status continues to be that of a statutory tenant and his occupation of the premises cannot be treated as unauthorized. Learned counsel then argued that in view of the serious dispute between the parties, respondent No.2 was not justified in requiring the appellant to fulfil an impossible condition.

Learned Government Pleader for Prohibition and Excise defended notice dated 6.7.206 by contending that the same was issued in furtherance of the direction given by the Court in Writ Petition No.11292 of 2006 filed by respondent No.4.

Sri Koka Raghava Rao, Senior Advocate for respondent No.4 supported the order under challenge and argued that the direction given by the learned Single Judge for determination of the issues relating to grant of licence to the appellant subject to production of 'No Objection Certificate' from the owner cannot be termed as erroneous. Learned counsel submitted that the lease of the premises had come to an end on 31.3.2002 by efflux of time and in the absence of express renewal thereof in terms of clause 10 of the lease deed, the appellant cannot retain possession of the premises and insist on the grant of licence in terms of Rule 27 of the Rules.

We have considered the respective submissions. The question

whether tenure of the lease of the premises in question stood automatically terminated on 31.3.2002 and whether there was any implicit extension of the term of lease by respondent No.4, are not required to be adjudicated in this appeal, because the issue is sub judice before the Civil Court. Likewise, the question whether the appellant can be treated as tenant holding over or as tenant at sufferance, is not required to be adjudicated by this Court under Article 226 of the Constitution of India and Clause 15 of the Letters Patent. However, on a plain reading of the language of Rule 27 (1) of the Rules, we are convinced that the licensing authority cannot insist on production of 'No Objection Certificate' by the appellant as a condition for deciding the suitability of the premises where he wants to run the liquor shop. The back ground in which the dispute has cropped up between the appellant and respondent No.4 ought to have been taken into consideration by respondent No.2 before issuing notice dated 6.7.2006. The failure of the officer concerned to direct his attention to the fact that the premises in question had been leased out to the appellant for doing liquor business and that he had been running the liquor shop for the last five years in the same premises has certainly resulted in miscarriage of justice. The condition imposed by respondent No.2 viz., production of 'No Objection Certificate' from the land owner was an impossible condition and the inability of the appellant to produce the same cannot be made a ground for not issuing licence to him.

In the result, the appeal is partly allowed. The order of the learned Single Judge is modified to the extent it requires production of 'No Objection Certificate' from the owner of the premises by the appellant as a condition precedent to the grant of licence under Rule 27 (1) of the Rules. As a sequel to this, the writ petition is disposed of with the direction that the competent authority shall, within a period of four weeks from today, pass appropriate orders in terms of Rule 27 (1) of the Rules without insisting on the production of 'No Objection

Certificate' from the owner of the premises i.e., respondent No.4.

Learned Government Pleader for Excise is directed to communicate this direction to the officer concerned, so that there may not be any lapse on his part in passing appropriate order in accordance with law.

As a sequel to disposal of the appeal in the manner indicated above, WAMP No.2778 of 2006 filed by the appellant is disposed of as infructuous.

At this stage, Sri O.Manohar Reddy made an oral prayer that his client may be allowed to continue to do the business in the disputed premises till the decision of the application made by him for grant of licence.

The request of the learned counsel is reasonable and merits acceptance. Hence, the official respondents are directed to allow the appellant to continue to sell liquor from the shop situated in the premises in question till passing fresh order by the competent authority, which, as mentioned above, is required to be passed within four weeks form today.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

15-12-2006

psr